

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,854

In re: 6600 Luzon Avenue, N.W.

Ward Four (4)

BORGER MANAGEMENT, INC.

Housing Provider/Appellant

v.

ROSA LEE

WINCHESTER-LUZON TENANTS ASSOCIATION

Tenants/Appellees

**ORDER ON MOTION FOR RECONSIDERATION OF ORDER ON MOTION TO
STAY APPEAL PENDING DISPOSITION OF A MOTION TO VACATE FINAL
ORDER**

March 26, 2008

YOUNG, CHAIRMAN. On February 22, 2008, the housing provider filed a Motion to Stay Appeal Pending Disposition of a Motion to Vacate Final Order (Motion). in the Commission. The motion stated, in part:

Using authority of the D.C. Court of Appeals as its guide, Borger hereby requests that the RHC stay this appeal until the ALJ who issued the decision below rules on the motion. In Carter v. The Cathedral Avenue Cooperative, 532 A.2d 681 (D.C. 1987), the Court ruled that, under these circumstances, the trial court should consider the motion and, if it indicates it is inclined to grant it, the appellant may move to have the case remanded to the trial court.

By order dated March 7, 2008, the Commission denied the housing provider's Motion to Stay Appeal. See Borger Mgmt, Inc. v. Lee, et.al, RH-TP-06-28,854 (RHC Mar. 7, 2008) (Order). On March 11, 2008, the housing provider filed a Motion for Reconsideration of the Commission's order. The housing provider argued that the Commission's order was erroneous for two (2) reasons. The housing provider argues that

the Motion to Vacate Final Order was filed pursuant to the applicable Office of Administrative Hearings (OAH) regulations, and was timely under the rules for Motions for Reconsideration. The housing provider also argues that the Commission's order was erroneous in its characterization of the Motion to Vacate Final Order filed with OAH as a Motion for Reconsideration.

The housing provider argues that its intention was to file a Motion to Vacate Final Order pursuant to OAH rule 1 DCMR § 2833.2 and not a Motion for Reconsideration. The Order contained the Commission's rule on Notices of Appeal and Motions for Reconsideration, 14 DCMR § 3802.3 (2004), the Order stated:

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

Order at 2. Accordingly, pursuant to the Commission's regulations, once the time period for filing a Motion for Reconsideration lapsed jurisdiction over the matter passed to the Commission pursuant to the housing provider's Notice of Appeal. The Order further stated:

Time limits for filing Notices of Appeals and Motions for Reconsideration are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. Dist. of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. Dist. of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). Accordingly, jurisdiction over the instant appeal was removed from the ALJ and the Office of Administrative Hearings when the housing provider failed to file a Motion for Reconsideration.

Order at 3. Therefore, pursuant to the Commission's rules, the ALJ lacked jurisdiction to act on this matter after the time period for the filing of a Motion for Reconsideration passed.¹

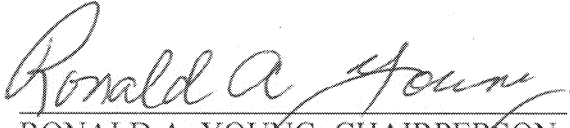
Finally, the Commission's Order stated:

The Commission's rule on stays, 14 DCMR § 3805.3 (2004), requires the Commission to consider four factors, when adjudicating a motion for stay. They are: 1) the likelihood of eventual success of the moving party; 2) the likelihood of irreparable injury to either party; 3) the balancing of injury as between the moving party and the other party(ies); and 4) the effect of a stay on the public interest.

In the instant case, the housing provider failed to address any of the factors which the Commission is required to consider when adjudicating a motion for stay.

Order at 4. For the above stated reasons the Commission denied the housing provider's motion. For the same reasons the housing provider's Motion for Reconsideration is DENIED.

SO ORDERED


RONALD A. YOUNG, CHAIRPERSON

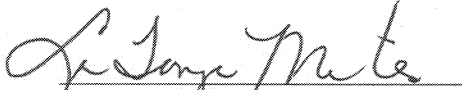
¹ In Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, 575 A.2d 1205 (D.C. 1990), the District of Columbia Court of Appeals stated that it accords great deference to interpretation by the Commission of the Act and regulations which it administers, and will reject the Commission's interpretation of its regulations only if it is plainly wrong or incompatible with the statutory purpose.

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER ON MOTION FOR RECONSIDERATION OF MOTION TO STAY APPEAL PENDING DISPOSITION OF A MOTION TO VACATE FINAL ORDER** was served by priority mail, with delivery confirmation, postage prepaid, this 26th day of March, 2008, to:

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